

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

GABE LOCKETT CULLER,

Plaintiff,

VS.

Officer DESCOTEAUX,

Defendant.

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NO. 5:13-CV-8 (MTT)

ORDER

Plaintiff **GABE LOCKETT CULLER** has filed a notice of appeal (Doc. 13) and a motion to proceed *in forma pauperis* on appeal. (Doc. 15). It is difficult to determine from what Order Plaintiff is appealing. To the extent that he seeks to appeal from the district court's January 11, 2013 Order (Doc. 3), which referred Plaintiff's action to the United States Magistrate Judge, or the February 19, 2013 Order (Doc. 10), in which the district court adopted the United States Magistrate Judge's Recommendation to dismiss some of Plaintiff's claims from the action, neither Order is final and appealable. See Fed. R. Civ. P. 54(b); *Supreme Fuels Trading FZE v. Sargeant*, 689 F.3d 1244, 1246 (11th Cir. 2012). To the extent that Plaintiff seeks to appeal from the United States Magistrate Judge's January 23, 2013 Order and Recommendation (Doc. 5), it is not a final appealable decision. See 28 U.S.C. § 636(b)-(c); *Perez-Priego v. Alachua Cnty. Clerk of Court*, 148 F.3d 1272, 1273 (11th Cir. 1998).

Given the current procedural posture of Plaintiff's 42 U.S.C. § 1983 action, this Court finds that an appeal cannot be taken in good faith. 28 U.S.C. §1915(a)(3). Having been carefully considered, Plaintiff's motion to proceed *in forma pauperis* on

appeal is hereby **DENIED**.

If Plaintiff wishes to proceed with his appeal, he must pay the entire \$455.00 appellate filing fee. Because Plaintiff has stated that he cannot pay the \$455.00 immediately, he must pay using the partial payment plan described under 28 U.S.C. §1915(b). Pursuant to §1915(b), the prison account custodian where Plaintiff is incarcerated shall cause to be remitted to the Clerk of this Court monthly payments of 20% of the preceding month's income credited to Plaintiff's account until the \$455.00 appellate filing fee has been paid in full. Twenty percent of any deposits into the prisoner's account shall be withheld by the prison account custodian who, on a monthly basis, shall forward the amount withheld from the prisoner's account to the Clerk of this Court each time the amount in the account exceeds \$10.00 until the total filing fee of \$455.00 has been paid. Checks should be made payable to Clerk, U.S. District Court.

The Clerk of Court is **DIRECTED** to mail a copy of this Order to the custodian of the prison in which Plaintiff is incarcerated.

SO ORDERED AND DIRECTED this 20th day of March, 2013.

S/ Marc T. Treadwell
MARC T. TREADWELL, JUDGE
UNITED STATES DISTRICT COURT

Inb